

Remarks

Claims 1-5 and 7-18 are currently pending in the application. Applicant notes with appreciation that the earlier amendments and arguments set out in the response to the office action filed on 2 March 2007 overcame the objections based on Deveaux, Morris, and Nero that were set out in the first office action. Applicant notes the new objections raised on the basis of Yeager under 35 USC § 102(e), Yeager in view of Nero on the basis of 35 USC § 103(a) and Yeager in view of Nero and newly cited reference Nadeau (US3,563, 208). These objections are addressed below.

Claim Rejections – 35 USC § 102

Claims 1-5, 7, 9, 10 and 14 were rejected on the basis of 35 USC § 102(e) as being disclosed in Yeager. This objection is most respectfully traversed on the following basis.

Initially, Applicant respectfully does not agree that the wave like projections on the spine of the Yeager device are stiffening members within the meaning of the feature of the claim. These features of Yeager are purely decorative. Yeager does not ascribe any technical function to them in the brief mention that is made of them in the first few lines of column 5, and from the figures they look to be of such short length in relation to the rest of the spine that it is doubtful that they could impart any stiffening effect on the spine. For the record, Applicant disputes that this feature is shown in Yeager, but it should be noted that quite apart from this feature, there are several other differences between the Yeager device and the claimed invention.

An objection under 35 USC § 102 is only proper where each and every feature of the claims rejected can be unambiguously found within the reference. In this case, the reference Yeager omits at least the following two features in the claims:

“Restraining apparatus.....”

The Yeager apparatus is deliberately not a restraining apparatus. It is clearly a toy as indicated in its title, and consistently throughout the disclosure, and its primary function is to encourage the children to remain close to the toy, without harnessing them in any way. See the whole of the section marked as background of the invention in Yeager, which emphasises repeatedly the prior art systems that seek to restrain children mechanically. By this section, Yeager is clearly promoting the benefits of encouraging the children to remain as a group voluntarily, rather than relying on physical restraints. For example, in column 1 Yeager states that the child wandering behaviour:

“...is generally the result of not being sufficiently stimulated by the task at hand and something else sparks the child's attention. Traditionally, the approach to managing the problem has focused on hardware-based methods and materials. Attempts to control children have involved the use of tethers, buckles, rings and poles....

....the nature of such devices can contribute to injuries related to entanglement, pinching, pulling, jarring and tripping. Further, the appearance or mechanics of such devices tends to be perceived as leash-like as in controlling animals. Additionally known devices have been complex, often requiring technically or physically cumbersome set-up or operation. Such known devices may also readily malfunction or become misplaced.”

Yeager goes on to state at line 53 of column 1 that the toy disclosed in that reference

“does NOT employ tethers, rings, buckles or coils as in harnesses or safety line systems”
(emphasis added)

This consistent and emphatic teaching reinforces that whatever else the Yeager document does specifically teach, it does not teach, *and in fact positively dismisses, i.e., teaches away from*, any kind of restraint.

On this basis alone, Yeager is not a basis for an objection under 35 USC § 102, as it does not teach the construction of “restraining apparatus” as claimed in combination with the other features of the claim.

Claim 1 also includes the second related feature of the claims not found within Yeager:

“..at least two lateral attachment members adapted to couple respective first and second users to the spine member,...”

As alluded to above, the positive recitation of the term “attachment members” within claim 1 is not disclosed by the Yeager system, except to dismiss it, and say that it is specifically not to be included within the Yeager device. Thus the “lateral extensions 24” referred to by the examiner in paragraph 2 of the office action are not in fact “attachment members” as claimed, and in any event they are not “adapted to couple” respective members to the spine as also recited in the claim. Coupling members to the spine of Yeager would be entirely contrary to the specific and clear teaching in column 1 line 57-59 that the Yeager device should NOT employ attachment members or any kind.

Thus, whether or not the wave-like projections can comprise stiffening members (which Applicant respectfully disputes), the invention as claimed in claim 1 incorporates at least two other significant features that are not disclosed in the Yeager reference, and therefore withdrawal of the rejection under 35 USC § 102 is most respectfully requested on this basis.

Claim Rejections – 35 USC § 103

Rejection of claim 17 under 35 USC § 103 in view of Yeager and Nero

Claim 17 was rejected on the basis of 35 USC § 103 as being obvious in view of the primary reference of Yeager when combined with the secondary reference of Nero. Since claim 17 is dependent on claim 1, it includes all of the features of claim 1. As argued above, claim 1 is allowable over the prior art of record, and accordingly the Applicant submits that dependent claim 17 is therefore also allowable, by virtue of the dependency of claim 17 upon claim 1.

In addition, it is clear from any reading of Yeager that any modification of the Yeager

device to introduce light emitting devices would still not include any kind of attachment member, which would not be contemplated by the skilled person, who would take from Yeager the unmistakable message that attachment to the spine by whatever means is absolutely incompatible with Yeager (see the passages cited and discussed above in relation to the rejections under 35 USC § 102). Thus, any combination of Yeager with any cited document would still not result in the claimed combination that included the restraint and attachment member features, whether or not the resultant combined device contained light emitting devices.

Thus, the rejection of claim 17 on the basis of 35 USC § 103 in view of Yeager when combined with Nero is most respectfully traversed.

Rejection of claims 8, 11, 12, 13, 15 and 16 under 35 USC § 103 in view of Yeager, Nero and Nadeau.

The above claims are all dependent on claim 1, and each of them includes all of the features of claim 1. As argued above, claim 1 is allowable over the prior art of record, and accordingly the applicant submits that these dependent claims are, therefore, also allowable, by virtue of their dependency upon claim 1.

In addition, it is clear from any reading of Yeager that any contemplated modification of the Yeager device to introduce the features of any of these dependent claims would still not include any kind of attachment member, which would not be contemplated by the skilled person, who would again read Yeager as being inherently incompatible with any kind of physical restraint or attachment to the spine (see the passages cited and discussed above in relation to the rejections under 35 USC § 102). Thus, any combination of Yeager with any cited document would still not result in the claimed combination that included the restraint and attachment member features, whether or not the resultant combined device contained releasable the attachment members of claim 8, the pivots of claims 11 and 12, the geometrical arrangement of claim 13, or the harnesses of claims 15 and 16.

Thus the rejection of these dependent claims on the basis of 35 USC § 103 in view of

Yeager, Nero and Nadeau is most respectfully traversed.

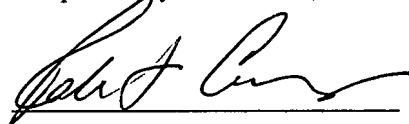
Rejection of claim 18 under 35 USC § 103 in view of Yeager, Nero and Nadeau.

Independent method Claim 18 was rejected on the same basis as dependent claims 8, 11, 12, 13, 15 and 16 discussed in the above paragraph. Independent method claim 18 contains the feature of harnessing the person to the spine member. This step alone is entirely incompatible with the Yeager teachings, which as argued above, strongly dismiss the possibility and validity of any kind of physical tether to the spine member of the device, and so on the same basis as argued above, the primary reference of Yeager contemplated by a skilled man would not suggest that he modified the Yeager device to do the very thing that Yeager says not to do. Accordingly the rejection on the basis of this combination (or any combination based on Yeager) is not sustainable and the rejection is most respectfully traversed on this basis.

It is respectfully submitted that all pending claims are in condition for allowance, and Applicant respectfully requests that allowance be granted at the earliest date possible. Should the Examiner have any questions or comments regarding Applicant's amendments or response, the Examiner is asked to contact Applicant's undersigned representative at (215) 988.3303.

If there are any fees due in connection with the filing of this Amendment, please charge the fees to our Deposit Account No. 50-0573.

Respectfully submitted,



ROBERT E. CANNUSCIO ESQ.
Registration No. 36,469
DRINKER BIDDLE & REATH LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-996
(215) 988-3303 - Phone
(215) 988-2757 - Fax
Attorney for the Applicant